



May 17, 2017

MUR 7237

VIA E-MAIL & FEDERAL EXPRESS

Federal Election Commission  
Office of Complaints Examination and  
Legal Administration  
Attn: Kathryn Ross, Paralegal  
999 E Street, NW  
Washington, D.C. 20463

Re: MUR 7273

Dear Counsel:

Yahoo! Inc. ("Yahoo") respectfully submits this response to MUR # 7237. The April 13, 2017, complaint from Mr. Kerry D. Bowers (the "Complaint") alleges that Yahoo made an illegal contribution to the presidential campaign of Senator Ted Cruz when it published a Reuters news article describing Senator Cruz as "the first Republican presidential candidate to announce a run for the 2016 election." The Complaint alleges that this statement violated 11 C.F.R. § 100.73(b). However, that provision does not apply to an independent media organization, like Yahoo, which is not owned or controlled by a political party, committee or candidate. Hence, the Complaint provides no basis for an investigation and Yahoo requests that this matter be dismissed.

Yahoo! News ("Yahoo News") is an online property of Yahoo that both generates original content, and distributes third party content, including from Reuters and the Associated Press. It is unaffiliated with any political party, candidate, or political committee. Yahoo News provides its users high quality reporting on current and trending news in an easy-to-access format, allowing users to be informed and to form their own opinions on the major issues of the day. Ex. A.

On March 22, 2015, Yahoo News ran a Reuters story reporting that Senator Ted Cruz was about to announce his candidacy for the 2016 presidential election. The Reuters story stated that Senator Cruz "would become the first Republican presidential candidate to announce a run for the 2016 election." Ex. B.

The Complaint alleges that the quoted sentence violated 11 C.F.R. § 100.73(b), but, far from imposing liability, that provision protects independent media organizations such as Yahoo. It provides that "[a]ny cost incurred in covering a news story, commentary, or editorial by any . . . Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not a contribution" subject to FEC regulation. 11 C.F.R. § 100.73. A

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news report may be treated as a contribution only if "the facility is owned or controlled by any political party, political committee, or candidate." *Id.* The provision continues by noting that, if the news facility is under such ownership or control,

a news story (a) that represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility; and (b) that is part of a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not a contribution.

*Id.*; see also 52 U.S.C. §§ 30101(9)(B)(i), 30104(f)(3)(B)(i) (exempting from FEC regulation "a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate"). This media exemption protects "news stories, commentaries, and editorials no matter in what medium they are published," including through publications distributed exclusively on the Internet. *Explanation and Justification for the Regulations on Internet Communications*, 71 F.R. 18,589, 18,608-09 (Apr. 12, 2006); see also Advisory Opinion 2005-16 (Fired Up!).

The FEC uses a two-step process to determine whether a corporate entity like Yahoo qualifies for the media exemption. First, the FEC determines whether the entity is a press or media entity. Advisory Opinion 2008-14 (Melothe, Inc.). Next, the Commission applies the two-part analysis devised in *Reader's Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981). *Id.* Under that test, the Commission will not conduct an investigation unless it determines that the press exemption does not apply. To do so, the Commission must find that "the press entity is owned by the political party or candidate and . . . the press entity was [not] acting as a press entity in making the distribution complained of." *Reader's Digest*, 509 F. Supp. at 1215; see also Advisory Opinion 2008-14 (Melothe, Inc.).

Under the *Reader's Digest* test, Yahoo is neither owned nor controlled by any political party, political committee, or candidate.<sup>1</sup> Ex. A; see also 11 C.F.R. §§ 100.3(a), 100.13, 100.14, 100.15 (defining candidate, national committee, state or local committee, and political party, respectively). The complainant has not argued otherwise and has offered no evidence of political ownership or control.<sup>2</sup>

<sup>1</sup> The Complaint does not dispute that Yahoo acted as a press entity when it published the Reuters article. See Advisory Opinion 2008-14 (Melothe, Inc.) (entity is a media organization if it "disseminates news stories, commentaries, and/or editorials"); see also Advisory Opinions 2007-20 (XM Radio) and 2005-19 (The Inside Track). Yahoo provides its users with access to both reporting from widely known and respected wire services, such as Reuters and the Associated Press, and original content generated by Yahoo's own award winning journalists. Ex. A. Yahoo News's content is available to the general public. Its political coverage is the "normal press-business of covering and commenting on political campaigns." Advisory Opinion 1989-28 (Maine Right to Life Committee) (citing Advisory Opinions 1987-8, 1982-58, 1980-109, & 1980-90).

<sup>2</sup> The Complaint relies exclusively on § 100.73. Even if the Complaint is liberally construed to allege that the story in question was an independent expenditure subject to FEC regulation, the Complaint still fails. FEC regulations governing "electioneering communications" apply only to a communication that "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate," *Citizens United*

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Because Yahoo is not under the control of any party, candidate, or committee, the Commission is barred from treating its news coverage as a contribution or expenditure. *FEC v. Phillips Pub., Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981) ("If the press entity is not owned or controlled by a political party or candidate . . . the FEC lacks subject matter jurisdiction and is barred from investigating the subject matter of the complaint."). The Complaint therefore provides no grounds for an investigation. Yahoo is an independent media organization whose right to report the news to its users is protected by regulation, statute, and the Constitution. The Complaint should be dismissed.

This letter is not a full recitation of the facts related to this matter and is without prejudice to Yahoo's rights, claims, and defenses, all of which are expressly reserved.

Sincerely,



Daniel C. Tepstein  
Vice President & Associate General  
Counsel, Yahoo! Inc.

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v. *FEC*, 558 U.S. 310, 325 (2010), and do not apply to reports made by independent media organizations, 52 U.S.C. § 30104(f)(3)(B)(i). No reasonable reader could interpret the March 22, 2015, story as an appeal to vote for or against a specific candidate. Even if it were such a statement, because Yahoo is an independent media organization, the FECA protects its right to freely publish news stories.

# EXHIBIT A

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**FEDERAL ELECTION COMMISSION  
MUR 7237**

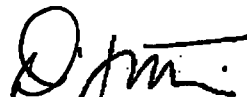
**DECLARATION OF DANIEL C. TEPSTEIN**

I, Daniel C. Tepstein, declare under penalty of perjury as follows:

1. My title is Vice President and Associate General Counsel at Yahoo! Inc.
2. Yahoo! News is an online property of Yahoo! Inc. ("Yahoo") that publishes original news content and news content from wire services including Reuters. Yahoo is not owned or controlled by a political party, candidate, or political committee. Yahoo's news offerings cover a broad range of areas including sports, politics, current events, media, tech, and science.
3. Under Yahoo's agreement with Reuters, Yahoo automatically publishes new reports upon their release from Reuters. Yahoo's algorithms scan the reports and automatically publish stories that do not violate Yahoo's standards (for example, stories that contain obscenity are not published).
4. Yahoo also generates original news content internally. This content includes video news segments, photojournalism, and written news coverage. Yahoo employs a number of award winning journalists on staff to produce this original content.
5. Yahoo provides the general public with open access to its news content. Users who create free accounts with Yahoo have the ability to customize their news offerings. Yahoo does not target its content to specific political groups, nor does it restrict access on the basis of political affiliation.
6. Yahoo's political coverage, both original and wire stories, reports on the major political stories of the day without bias or favoritism. Yahoo does not endorse candidates for office and does not slant its coverage to favor or disfavor particular parties, candidates, or policies.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 17, 2017.



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Daniel C. Tepstein

# EXHIBIT B

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## Texas Senator Ted Cruz to announce presidential run: report



Reuters March 22, 2015



Popular in the Community

Texas Senator Ted Cruz to announce presidential run: report

(Reuters) - Republican Senator Ted Cruz plans to announce on Monday that he will run for president in 2016, the Houston Chronicle reported on its website.

The newspaper, citing senior advisers to the Texas senator who spoke on condition of anonymity, reported that Cruz would launch a presidential bid outright rather than the traditional path of forming an exploratory committee.

He would become the first Republican presidential candidate to announce a run for the 2016 election.

Cruz, a leading conservative who was elected to the U.S. Senate in 2012, is slated to make a speech on Monday at Liberty University in Virginia. "You're going to want to be there," a member of Cruz' staff told the Daily Beast web site but declined to reveal the specific nature of the address.

Last weekend the first-term Texas senator was in New Hampshire, a state crucial to presidential aspirants because of its early primary. Also there were other potential candidates: Jeb Bush, the former governor of Florida; former Texas governor Rick Perry; and Wisconsin Governor Scott Walker.

Cruz has also spent time in Iowa, another key early state.

In an interview on MSNBC last week, Cruz said he had been getting "very encouraging" support regarding a presidential run.

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